

Due to her medical treatments, the claimant has been unable to work since the start of her claim. Because she is not capable of working or available for work at all, she does not meet the eligibility criteria of G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0056 7262 70

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with an effective date of July 26, 2020. In a determination issued on November 10, 2020, the DUA denied benefits to the claimant because she was not capable of working due to medical concerns. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 7, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of working or available for work and, thus, was disqualified under G.L. c. 151A, §§ 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's capability and availability for work. The claimant participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not eligible for benefits while unable to work and unavailable for work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. On July 30, 2020, the claimant opened a claim for unemployment benefits with an effective date of July 26, 2020.
2. From May 2020, the claimant was on a leave of absence from work in order to attend chemotherapy treatment.

3. On July 9, 2020, during the leave of absence, the claimant separated from her last employer due to illness.
4. The claimant had a mastectomy on November 11, 2020.
5. From at least July 26, 2020, the claimant has not been available to work full-time due to her scheduled chemotherapy treatments. The claimant becomes ill after her treatments.
6. On October 30, 2020, the Health Care Provider's Statement of Capability states that the claimant has been unable to work full-time since May 15, 2020, because she is high risk of COVID-19 infection during chemotherapy and in preparation of surgery.
7. On January 13, 2020, the Health Care Provider's Statement of Capability states that due to the claimant's ongoing cancer treatments, there is a significant concern over exposure to COVID-19.
8. Since June 26, 2020, the claimant has been unable to perform work outside of her home because she is considered highly susceptible to COVID-19.
9. Since the start of her claim on July 26, 2020, the claimant has not been able to perform work remotely from her home, whether on a full-time or part-time basis.
10. From January, 2021, the claimant began receiving daily radiation treatment. The treatment will continue for a five-week period.
11. Since the start of her claim on July 26, 2020, the claimant has been completely unable to perform work, even part-time work from home, because she was too weak/sick from her medical treatment.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We set aside the portion of Consolidated Finding # 7, which states the date of the Statement of Capability is January 13, 2020. The date on the Statement of Capability is January 13, 2021.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

During their benefit year, claimants must meet the specific eligibility criteria set forth in G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted

The claimant's work search efforts are not at issue in this decision. Only her capability and availability for work are at issue, as the claimant's medical issues have affected her ability to work. The review examiner originally denied benefits to the claimant as of the start of her claim, July 26, 2020, concluding that the claimant was neither capable of working, nor available for work due to her chemotherapy treatments. Because we did not believe that the record contained sufficient information to determine whether the claimant was capable of performing some type of work, at least on a part-time basis, we remanded the case for additional evidence. After remand, based on the claimant's testimony and her medical documentation, the review examiner found that as of the start of her claim, the claimant has been completely unable to perform work, even part-time work from home, because she has been too weak from her medical treatment. *See Consolidated Finding # 11.*

Ordinarily, under federal and Massachusetts law, claimants may not limit their availability to less than full-time work, and even under the temporary limited circumstances in which reducing their availability has been permitted for COVID-19 related reasons, they may not limit their availability to less than part-time work.² Here, because the claimant has not been capable of performing any work since the start of her claim, she is not eligible for benefits.

We, therefore, conclude as a matter of law, that the claimant does not meet the capability and availability requirements of G.L. c. 151A, § 24(b).

² *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b); U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b); DUA UI Policy and Performance Memo (UIPP) 2020.14 (Nov. 25, 2020), p. 2-3; and UIPP 2021.02 (Jan. 22, 2021), p. 2.

The review examiner's decision is affirmed. The claimant is not eligible for benefits beginning on July 26, 2020, and until she meets the requirements of G.L. c. 151A, § 24(b).



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 3, 2021



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

SVL/rh